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14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA,
16 SAN FRANCISCO DIVISION
17

18 SONOS, INC.,
19 Plaintiff and Counter-defendant,
20 v.
21 GOOGLE LLC,
22 Defendant and Counter-claimant.
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Case No. 3:20-cv-06754-WHA
Related to Case No. 3:21-cv-07559-WHA

**SONOS, INC.'S ADMINISTRATIVE
MOTION TO FILE UNDER SEAL RE
SONOS'S MOTION *IN LIMINE* NO. 5**

I. INTRODUCTION

Pursuant to Civil Local Rules 7-11 and 79-5, Sonos, Inc. (“Sonos”) hereby respectfully submits this Administrative Motion to Seal (“Administrative Motion”) in connection with Sonos’s Motion *in Limine* No. 5 (“Sonos’s Motion”) and Google’s Response to Motion *in Limine* No. 5 (“Google’s Response”). Specifically, Sonos seeks to file under seal the information and/or document(s) listed below:

DOCUMENT	PORTIONS TO BE SEALED	DESIGNATING PARTY
Exhibit A to Kolker Declaration	Portions highlighted in blue	Sonos
Exhibit B to Kolker Declaration	Portions highlighted in blue	Sonos
Exhibit C to Kolker Declaration	Portions highlighted in blue	Sonos
Google’s Response	Portions highlighted in blue	Sonos

II. LEGAL STANDARD

Civil Local Rule 79-5 requires that a party seeking sealing “establish[] that the document, or portions thereof, are privileged, protectable as a trade secret or otherwise entitled to protection under the law” (*i.e.*, is “sealable”). *See* Civil L.R. 79-5(b). The sealing request must also “be narrowly tailored to seek sealing only of sealable material.” *Id.*

“Historically, courts have recognized a ‘general right to inspect and copy public records and documents, including judicial records and documents.’” *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 597 & n.7 (1978)). Accordingly, when considering a sealing request, “a ‘strong presumption in favor of access’ is the starting point.” *Id.* (quoting *Foltz v. State Farm Mutual Auto. Insurance Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003)).

The Ninth Circuit has recognized that two different standards may apply to a request to seal a document – namely the “compelling reasons” standard or the “good cause” standard. *Blessing v. Plex Sys., Inc.*, No. 21-CV-05951-PJH, 2021 WL 6064006, at *12 (N.D. Cal. Dec. 22, 2021) (citing *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1096-97 (9th Cir. 2016)). The compelling reasons standard applies to any sealing request made in connection with

1 a motion that is “more than tangentially related to the merits of a case.” *Id.* A party seeking to
 2 seal materials submitted with a motion that is “more than tangentially related to the merits of the
 3 case” must demonstrate that there are “compelling reasons” to keep the documents under seal.
 4 *WhatsApp Inc. v. NSO Grp. Techs. Ltd.*, 491 F. Supp. 3d 584, 596 (N.D. Cal. 2020) (citing *Ctr.*
 5 *for Auto Safety*, 809 F. 3d at 1101-1102). What constitutes a compelling reason is left to the
 6 “sound discretion of the trial court.” *Ctr. for Auto Safety*, 809 F.3d at 1097 (quoting *Nixon*, 435
 7 U.S. at 599).

8 Under the compelling reasons standard, “a court may seal a record only if it finds a
 9 ‘compelling reason’ to support such treatment.” *Blessing*, 2021 WL 6064006, at *12. In applying
 10 the “compelling reasons” standard, the Ninth Circuit has found appropriate the sealing of
 11 documents where court records could be used “as sources of business information that might
 12 harm a litigant’s competitive standing.” *See Ctr. for Auto Safety*, 809 F.3d at 1097. “Confidential
 13 business information in the form of ‘license agreements, financial terms, details of confidential
 14 licensing negotiations, and business strategies’ satisfies the ‘compelling reasons’ standard.”
 15 *Hetland v. LendingTree, LLC*, No. 19-CV-02288-JSC, 2021 WL 2313386, at *1 (N.D. Cal. May
 16 3, 2021) (quoting *Exeltis USA Inc. v. First Databank, Inc.*, Case No. 17-cv-04810-HSG, 2020
 17 WL 2838812, at *1 (N.D. Cal. June 1, 2020)).

18 **III. THE COURT SHOULD SEAL SONOS’S CONFIDENTIAL MATERIAL**

19 The portions of Google’s Response highlighted in blue, and the exhibits listed above
 20 (including the blue highlighted portions of Exhibits A, B, and C to the Kolker Declaration),
 21 contain references to Sonos’s confidential business information and trade secrets, including
 22 technical details of the operation of Sonos’s technology and Sonos’s research and development
 23 processes. The specifics of how this technology operates is confidential information that Sonos
 24 does not share publicly. Thus, public disclosure of such information may lead to competitive
 25 harm as Sonos’s competitors could use these details regarding the architecture and functionality
 26 of these products to gain a competitive advantage in the marketplace with respect to their
 27 competing products. The above-referenced materials also include details of confidential
 28 communications between the parties, which Sonos does not share publicly. A less restrictive

1 alternative than sealing the portions of the exhibits indicated in the table above would not be
 2 sufficient because the information sought to be sealed is Sonos's confidential business
 3 information and trade secrets and is integral to Sonos's legal arguments (in the case of Exhibits A,
 4 B, and C to the Kolker Declaration) or is cited by Google (in the case of Google's response). *See*
 5 Declaration of Clement Roberts in Support of Administrative Motion filed concurrently herewith,
 6 ¶ 4.

7 **IV. CONCLUSION**

8 In compliance with Civil Local Rule 79-5(d) and (e), unredacted versions of the above-
 9 listed documents accompany this Administrative Motion and redacted versions are filed publicly.
 10 A proposed order is being filed concurrently herewith. For the foregoing reasons, Sonos
 11 respectfully requests that the Court grant Sonos's Administrative Motion.

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 13 Dated: April 25, 2023

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and
 LEE SULLIVAN SHEA & SMITH LLP

15 By: /s/ Clement S. Roberts
 16 Clement S. Roberts

17 *Attorneys for Sonos, Inc.*